

91-440

(1)

Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

GOLDBERG & FELDMAN FINE
ARTS, INC. AND PEG
GOLDBERG,

Petitioners,

v.

AUTOCEPHALOUS GREEK-
ORTHODOX CHURCH OF
CYPRUS, AND THE REPUBLIC
OF CYPRUS,

Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether The District Court Had Jurisdiction To Adjudicate An Action Filed By Foreign Plaintiffs Under 28 U.S.C. Section 1332, When:
 - a. The Foreign Sovereign Immunities Act (P.L. 94-583) Bars Foreign Plaintiffs From Bringing Suit In Federal District Court Under 28 U.S.C. Section 1332;
 - b. The Foreign Sovereign Immunities Act (P.L. 94-583) Restricts Actions By Foreign Plaintiffs To The "Arising Under" Clause of Article III of the U.S. Constitution; And When
 - c. This Court Has Already Ruled That The Diversity Clause Of The U.S. Constitution (Article III, Section 2) Is Not Sufficiently Broad To Support A Grant Of Jurisdiction Over Actions By Foreign Plaintiffs.

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption. Peg L. Goldberg is President and Sole Stockholder of Goldberg & Feldman Fine Arts, Inc. Pursuant to Supreme Court Rule 29.1, Petitioners state that Goldberg & Feldman Fine Arts, Inc. has no parent companies, subsidiaries or affiliates.

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No.

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v.

AUTOCEPHALOUS GREEK-
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CYPRUS, AND THE REPUBLIC
OF CYPRUS,

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

Goldberg & Feldman Fine Arts, Inc. and Peg L. Goldberg, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

REFERENCE TO OPINIONS OF COURTS BELOW

The opinion of the Court of Appeals, issued June 21, 1991, has not been reported in any known official or unofficial reporter. (App., *infra*, A-1). Likewise, the opinion of the District Court, issued May 3, 1991, has not been reported in any known official or unofficial reporter. (App., *infra*, A-3). Attached in the Appendix hereto are copies of the Opinions, Orders and Judgments issued by the United States Court of Appeals for the Seventh Circuit and the United States District Court for the Southern District of Indiana, Indianapolis Division.

JURISDICTION OF THIS COURT

The judgment of the United States Court of Appeals for the Seventh Circuit (App., *infra*, A-1) was entered on June 21, 1991. This Court has jurisdiction to review the issues presented herein pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The United States Constitution, Article III, Section 2 provides as follows:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; —

to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

The statute invoked by plaintiffs, 28 U.S.C. § 1332, provides in pertinent part:—

- (a) The District Courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and is between —
 - (2) citizens of a State and citizens or subjects of a foreign state.
- (d) The word “States”, as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

Also involved is the following statute: 28 U.S.C., § 1603, in pertinent part:

- (a) A “foreign state”, except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instru-

mentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity —

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title, nor created under the laws of any third country.

Federal Rules of Civil Procedure 12(h)(3)

Most defects are waived if the party fails to assert them at the time specified by the rules, but it is specifically provided that "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

STATEMENT OF THE CASE

Goldberg & Feldman Fine Arts, Inc. and Peg Goldberg (collectively Goldberg), petitioners in this Court, were sued in the District Court for the Southern District of Indiana by two foreign plaintiffs: The Republic of Cyprus and the Autocephalous Greek-Orthodox Church of Cyprus (collectively Cyprus). Subject matter jurisdiction was asserted under 28 U.S.C. § 1332 (a)(2), Diversity of Citizenship. No pendant or ancillary jurisdiction was invoked.

At issue are four sixth century Byzantine mosaics which originated in an abandoned church in the far northern portion of the Turkish Federated Republic of Northern Cyprus. The mosaics were exported from the Turkish Federated Republic of Northern Cyprus in 1978, and were acquired in July 1988 by Goldberg in Switzerland for \$1,080,000 with funds borrowed from the petitioners' bank. The purchase was consummated after Goldberg had first verified that, among other things, the United States was not a signatory to any international treaties which would preclude their acquisition and importation into the United States. Upon entering the United States, the mosaics were properly declared and cleared U.S. Customs without incident.

In January 1989 the Republic of Cyprus requested that U.S. Customs seize Goldberg's property. Goldberg voluntarily submitted to an investigation by U.S. Customs and, on February 24, 1989, received a letter from U.S. Commissioner of Customs William von Rabb, which stated:

As you know, the United States Customs Service has been conducting an inquiry on the entry into the United States of mosaics from Cyprus, which are now reportedly in your possession. The Customs service has conducted a thorough review of this matter, including the declaration of the mosaics when they entered the United States. In light of the facts available to us, the Customs Service sees no reason to contemplate enforcement action with respect to the mosaics.

Of course, this judgement does not preclude the Customs Service from reevaluating this situation if new facts should come to light. Please be advised, too, that this letter does not constitute a finding by the Customs Service with respect to all applicable U.S. laws but does reflect the view that, based on the current facts available to us, the mosaics entered the United States consistent with U.S. Customs regulations and procedures. (App., *infra*, A-7).

On March 29, 1989 petitioners were sued in Federal District Court. At issue was not only the right to possession of the mosaics but, according to the Complaint, Goldberg had "damaged" the mosaics, and had allowed them to be "improperly restored." The case was bifurcated, and trial was first held on the merits of the issue of possession. The District Court found for the Plaintiffs (717 F. Supp. 1374), a decision which was upheld by the Seventh Circuit Court of Appeals (917 F. 2d 298).

On April 11, 1991 Goldberg moved to dismiss both actions because of lack of subject matter jurisdiction. In response, on April 25, 1991, Cyprus moved the court to dismiss the remaining damages claim with prejudice, vacate the stay, impose sanctions, and to deny the defendants' motion for dismissal. In their memorandum in support of the motion, Cyprus asserted that "... Diversity jurisdiction with respect to the Church of Cyprus was clearly predicated on it being a 'citizen or subject of a foreign state' within the meaning of 28 U.S.C. § 1332 (a)(2)" and "... The Republic of Cyprus is obviously a foreign state, and one cannot imagine any basis for arguing to the contrary." (See Plaintiffs' Memo. at 10).

Despite the absence of subject matter jurisdiction, the District Court, without hearing, denied Goldberg's motion and entered Final Judgment in favor of the plaintiffs May 3, 1991. (App., *infra*, A-3). Additionally, the Court vacated the stay of the mosaics. (*id*).

The defendants appealed and simultaneously moved the District Court and Court of Appeals to impound the mosaics pending completion of this appeal. (See Defendant's Motions dated May 13, May 20 and May 30, 1991). Both Courts denied Goldberg's motions and, on June 21, 1991 the Court of Appeals summarily affirmed the District Court's Orders, stating only that "... we have reviewed the record on appeal and the district court order dismissing this case. We have already decided the jurisdictional issues before us in this appeal . . ." (App., *infra*, A-1).

Review of that earlier jurisdictional finding, however, reveals only the following statement:

Subject matter jurisdiction in this action was based on diversity of citizenship under 28 U.S.C. Sec. 1332(a)(2) Judge Noland found that the requirements of this subsection were met based on the following citizenships:

Plaintiff the Republic of Cyprus is a sovereign nation located on the island of Cyprus in the Mediterranean Sea. Plaintiff Autocephalous Greek-Orthodox Church of Cyprus is a religious organization with its principal offices in Nicosia, Cyprus. Defendant Goldberg and Feldman Fine Arts, Inc. is a corporation organized and existing under the laws of the state of Indiana, with its principal place of business in Carmel, Indiana. Defendant Peg Goldberg is a citizen of the state of Indiana.

Autocephalous, 717 F. Supp. at 1377.

Petitioners now seek review of these actions in this court.

REASONS FOR GRANTING THE WRIT

I. In Allowing Foreign Plaintiffs To Bring Suit Under 28 U.S.C. § 1332, The Court Of Appeals Is In Conflict With the U.S. Constitution, Article III, Section 2, The Foreign Sovereign Immunities Act, And With All Applicable Decisions Of This Court.

A. This Case Should Be Governed By The Rationale Of This Court's Prior Cases Construing The Statutes Defining The Jurisdiction Of The District Court.

The opinions below frustrate nearly 200 years of this Court's history.

At issue is the scope of federal jurisdiction under 28 U.S.C. § 1332. Since its inception, this Court has been unequivocal in its posture that, as courts of limited jurisdiction, the federal courts are empowered to hear only such cases as are within the judicial power of the United States, as defined by Article III of the U.S. Constitution, and have been entrusted to them by a jurisdictional grant of Congress. See, *e.g.*, *Marbury v. Madison*, 1 Cranch 137 (1803); *Hodgson v. Bowerbank*, 5 Cranch 303 (1809); *Cary v. Curtis*, 3 How. 236, 245 (1845); *The Mayor v. Cooper*, 6 Wall. 247 (1867); *Kline v. Burke Construction Co.*, 260 U.S. 226, 234 (1922); *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943); *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960); *Palmore v. United States*, 411 U.S. 389, 396 (1973); *Zahn v. International Paper Co.*, 414 U.S. 291, 301 (1973); *Sumner v. Mata*, 449 U.S. 539, n. at 548 (1981); *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983).

Further, that the jurisdiction of the federal courts is dependant upon the subject matter of the action or the status of the parties to it; it is not dependant upon the merits of the case. See, *e.g.*, *Hepburn & Dundas v. Ellzey*, 2 Cranch 445 (1804); *Strawbridge v. Curtis*, 3 Cranch 267 (1806); *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149 (1908).

A defect in subject matter jurisdiction is a fatal flaw:

Most defects are waived if the party fails to assert them at the time specified by the rules, but it is specifically provided that “whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” F.R.A.P. 12 (h)(3)

Without exception, this Court has found that:

— The parties cannot waive jurisdiction, even by express consent. See, *e.g.*, *Cutler v. Rae*, 7 How. 729 (1849); *Jackson v. Ashton*, 8 Pet. 148 (1834); *Sosna v. Iowa*, 419 U.S. 393, 398 (1975).

— Both plaintiffs and defendants, even after first invoking federal court jurisdiction and losing on the merits, may then challenge want of jurisdiction. See, *e.g.*, *Capron v. Van Noorden*, 2 Cranch 126 (1804); *American Fire and Casualty Co. v. Finn*, 341 U.S. 6 (1951); *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978).

— There must be complete — and statutorily valid — diversity of citizenship. As this Court stated in *Owen Equipment & Erection Co. v. Kroger*: “The limits upon federal jurisdiction, whether imposed by the Constitu-

tion or by Congress, must be neither disregarded nor evaded . . . Congress has established the basic rule that diversity jurisdiction exists under 28 U.S.C. 1332 only when there is complete diversity of citizenship. *The policy of the statute calls for its strict construction.*" 437 U.S. 365 at 375,377 (emphasis added). Citing *Healy v. Ratta*, 292 U.S. 263, 270; *Indianapolis v. Chase National Bank*, 314 U.S. 63, 76; *Thomson v. Gaskill*, 315 U.S. 442, 446; *Snyder v. Harris*, 394 U.S. 332, 340. See also, e.g., *Mossman v. Higginson*, 4 Dall. 12 (1800); *Strawbridge v. Curtiss*, 3 Cranch 267 (1806); *Coal Co. v. Blatchford*, 11 Wall. 172 (1870).

— The Court, whether trial or appellate, is obliged to notice want of jurisdiction on its own motion. See, e.g., *Williams v. Nottawa*, 104 U.S. 209 (1881); *Bors v. Preston*, 111 U.S. 252 (1883); *Pequignot v. Pennsylvania R. Co.*, 16 How. 104 (1853); *Mansfield, C. & L.M. Ry. v. Swan*, 111 U.S. 379 (1884); *Cameron v. Hodges*, 127 U.S. 322 (1888); *Louisville & N.R. Co. v. Mottley*, 211 U.S. 149 (1908); *Mitchell v. Maurer*, 293 U.S. 237 (1934); *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391, comment at 398 (1979).

— The burden is on the party claiming jurisdiction to demonstrate that jurisdiction of the subject matter exists. See, e.g., *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936); *McNutt v. McHenry Chevrolet Co.*, 298 U.S. 190 (1936); *Thomson v. Gaskill*, 315 U.S. 442 (1942).

In the instant case, Cyprus' response to Goldberg's motion to dismiss in fact *confirmed* the absence of jurisdiction: ". . . Diversity jurisdiction with

respect to the Church of Cyprus was clearly predicated on it being 'a citizen or subject of a foreign state' within the meaning of 28 U.S.C. § 1332 (a) (2)," and "... The Republic of Cyprus is obviously a foreign state, and one cannot imagine any basis for arguing to the contrary." See Plaintiffs' Memo at 10.

This Court has already unanimously held that "a foreign plaintiff is not 'a State, or [a] Citize[n] thereof.'" See *Verlinden*, *supra*, at 492.

The District Court lacked power to entertain plaintiffs' lawsuit against the defendants.

Subject matter jurisdiction did not exist.

B. The Foreign Sovereign Immunities Act (P.L. 94-583) Bars Foreign Plaintiffs Under 28 U.S.C. § 1332.

In 1976, after more than a decade in gestation, Congress enacted P.L. 94-583, the Foreign Sovereign Immunities Act. ("the Act"). The impetus for the Act, at least in part, was to free the U.S. Government from diplomatic pressures by foreign nations seeking immunity and "to assure litigants that . . . decisions are made on purely legal grounds and under proceedings that insure due process." See H.R. Rep. (Judiciary Committee), No. 94-1487, 94th Cong. 2d Session, p. 7 (1976). As noted in the Legislative History of the Foreign Sovereign Immunities Act at 6610, the bill prescribes the manner in which the jurisdiction of U.S. district courts may be invoked in cases involving foreign plaintiffs.

This Act, as confirmed by this Court in *Verlinden*, *supra*, bars The Republic of Cyprus and the Autocephalous Greek-Orthodox Church of Cyprus from invoking the Diversity Clause of the U.S. Constitution

in order to bring an action against either an individual citizen or a corporate citizen of the state of Indiana. Former Chief Justice Burger, writing for a unanimous Court, found that:

Within Art. III of the Constitution, we find two sources authorizing the grant of jurisdiction in the Foreign Sovereign Immunities Act: the Diversity Clause and the "Arising Under" Clause. The Diversity Clause, which provides that the judicial power extends to controversies between "a State, or the Citizens thereof, and foreign States," covers actions by citizens of States. Yet diversity jurisdiction is not sufficiently broad to support a grant of jurisdiction over actions by foreign plaintiffs, *since a foreign plaintiff is not "a State, or [a] Citize[n] thereof."* See *Mossman v. Higginson*, 4 Dall. 12 (1800). We conclude, however, that the "Arising Under" Clause of Art. III provides an appropriate basis for the statutory grant of subject-matter jurisdiction to actions by foreign plaintiffs under the Act. (Emphasis added).

Verlinden, supra, at 492 (emphasis added).

The definitional parameters allowable under 28 U.S.C. § 1332 are clearly elaborated in 28 U.S.C. § 1332 (d) and 28 U.S.C. § 1603 (a) and (b) and cannot reasonably be construed to include a "third country" such as Cyprus.

This Court has upheld the constitutionality of the Foreign Sovereign Immunities Act. *Verlinden, supra*. Pursuant to this Act plaintiffs, The Republic of Cyprus, and the Autocephalous Greek-Orthodox Church

of Cyprus, thus were also barred from filing an action under 28 U.S.C. § 1332.

II. In Failing To Dismiss The Case For Want Of Subject Matter Jurisdiction, The Court Of Appeals Has So Far Departed From The Accepted Course Of Judicial Proceedings As To Call For The Exercise Of This Court's Supervisory Power.

The decision below renders impotent the Diversity Clause of the United States Constitution, disregards the parameters clearly imposed by Congress and ignores nearly 200 years of this Court's history.

The consequence of these errors is profound.

The defect in subject matter jurisdiction is apparent on the face of the complaint. Both the lower Court and the Court of Appeals were themselves obligated to raise the issue of want of subject matter jurisdiction. Instead, even following the petitioners' motion to dismiss, both Courts apparently regarded the absence of proper diversity as immaterial. The defect is palpably erroneous.

The decision below, unless reversed, thwarts the rights of American citizens and our own "States" to equitable judicial process under the Diversity Clause of the U.S. Constitution, and severely compromises the ability of the United States to extend uniform treatment to foreign governments. By these actions, the Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's power of supervision."

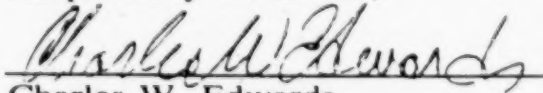
CONCLUSION

In 1868 Justice Swayze wrote that "... Two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it . . ." *The Mayor v. Cooper, supra*, 252. Both elements were clearly absent in the instant case.

Subject matter jurisdiction did not exist.

For the foregoing reasons, petitioners respectfully submit that a writ of certiorari should issue to review the Judgment and Opinion of the United States Court of Appeals for the Seventh Circuit. Indeed, so clear is the error of the Court below, petitioners believe the appropriate relief should be the summary reversal of the decision.

Respectfully submitted,



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APPENDIX



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UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

June 21, 1991

Before

Hon. WILLIAM J. BAUER, Chief Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. JOHN L. COFFEY, Circuit Judge

AUTOCEPHALOUS
GREEK-ORTHODOX
CHURCH OF CYPRUS and
THE REPUBLIC OF
CYPRUS,

Plaintiffs-Appellees,

No. 91-2069

v.

Appeal from the
United States
District Court for
the Southern
District of
Indiana,
Indianapolis
Division.

GOLDBERG & FELDMAN
FINE ARTS,
INCORPORATED and PEG
GOLDBERG,

Defendants-Appellants.

No. 89 C 304
James E. Noland,
Judge.

This matter comes before the court for its consideration of the following documents:

1. **“RENEWAL OF MOTION FOR ORDER
IMPOUNDING MOSAICS PENDING FINAL DE-**

TERMINATION OF SUBJECT MATTER JURISDICTION" filed herein on 5/30/91, by counsel for the defendants.

2. **"SUPPLEMENTARY MOTION FOR ORDER IMPOUNDING MOSAICS PENDING FINAL DETERMINATION OF SUBJECT MATTER JURISDICTION"** filed herein on 6/21/91, by counsel for the defendants.

3. **"BRIEF OF THE APPELLANTS"** filed herein on 6/21/91, by counsel for the defendants.

On consideration thereof,

IT IS ORDERED that the **RENEWAL OF MOTION FOR ORDER IMPOUNDING MOSAICS PENDING FINAL DETERMINATION OF SUBJECT MATTER JURISDICTION** is **DENIED**. Furthermore, we have reviewed the record on appeal and the district court order dismissing this case. We have already decided the jurisdictional issues before us in this appeal. See *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg*, 917 F. 2d 298 (7th Circuit 1990). Appellees cannot collaterally attack that decision by challenging subject matter jurisdiction in this case. Accordingly,

The appeal requires no further briefing and we summarily **AFFIRM** the district court's judgment.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**AUTOCEPHALOUS
GREEK-ORTHODOX
CHURCH OF CYPRUS and
THE REPUBLIC OF
CYPRUS,**

**CAUSE NO. IP
89-304-C**

Plaintiffs,

v.

**GOLDBERG & FELDMAN
FINE ARTS, INC., and PEG
GOLDBERG,**

Defendants.

FINAL JUDGMENT

This cause comes before the Court of the plaintiffs' Motion to Dismiss Damages Claim, to Vacate Stay, and for Sanctions, and the defendants' Motion to Dismiss for lack of personal and subject matter jurisdiction. This Court, being duly advised in the premises, and having GRANTED the plaintiffs' motion to dismiss the remaining damages claim, hereby ENTERS FINAL JUDGMENT in favor of the plaintiffs, the Autocephalous Greek-Orthodox Church and the Republic of Cyprus.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that JUDGMENT be entered in favor of the plaintiffs, and that costs be borne accordingly. The Autocephalous Greek-Orthodox Church of Cyprus has a superior and enforceable claim, as well as

valid title, to the mosaics in issue and may exercise immediate and unimpaired possession rights of the mosaics.

DATED this 3rd day of MAY, 1991.

JAMES E. NOLAND, U.S. District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**AUTOCEPHALOUS
GREEK-ORTHODOX
CHURCH OF CYPRUS and
THE REPUBLIC OF
CYPRUS,**

Plaintiffs,

v.

**GOLDBERG & FELDMAN
FINE ARTS, INC., and PEG
GOLDBERG,**

Defendants.

**CAUSE NO. IP
89-304-C**

ORDER

This cause comes before the Court on the plaintiffs' Motion to Dismiss Damages Claim, to Vacate Stay, and for Sanctions, and the defendants' Motion to Dismiss for lack of personal and subject matter jurisdiction. Whereupon the Court, having examined the memoranda in support thereof and in opposition thereto, and being duly advised, now makes the following rulings:

- 1) the plaintiffs' voluntary Motion to Dismiss Damages Claim is hereby GRANTED;
- 2) the plaintiffs' Motion to Vacate the Stay entered by Agreed Order by the Court on August 8, 1989 is hereby GRANTED;

3) the plaintiffs' Motion for Sanctions is hereby DENIED; and

4) the defendants' Motion to Dismiss is hereby DENIED in its entirety.

Further collateral attacks by the defendants on issues already resolved will not be recognized by the Court; such attacks will be deemed moot. All appellate proceedings having been exhausted and the plaintiffs having prevailed herein, the plaintiffs may exercise immediate and unimpaired possession rights of the mosaics. The Autocephalous Greek-Orthodox Church of Cyprus has a superior and enforceable claim, as well as valid title, to the mosaics in issue.

IT IS SO ORDERED.

DATED this 3rd day of MAY, 1991.

James E. Noland, U.S. District Judge



THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

February 24, 1989

Dear Ms. Goldberg:

As you know, the United States Customs Service has been conducting an inquiry on the entry into the United States of mosaics from Cyprus, which are now reportedly in your possession. The Customs service has conducted a thorough review of this matter, including the declaration of the mosaics when they entered the United States. In light of the facts available to us, the Customs Service sees no reason to contemplate enforcement action with respect to the mosaics.

Of course, this judgement does not preclude the Customs Service from reevaluating this situation if new facts should come to light. Please be advised, too, that this letter does not constitute a finding by the Customs Service with respect to all applicable U.S. laws but does reflect the view that, based on the current facts available to us, the mosaics entered the United States consistent with U.S. Customs regulations and procedures.

Sincerely,

[Signed]

William von Rabb

Ms. Peg L. Goldberg
Goldberg and Feldman
Fine Arts Inc.
12800 Shelbourne Road
Carmel, Indiana 46032